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Attorneys for Plaintiff, Jason Gerlach

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

**JASON GERLACH, on behalf of
himself and all others similarly
situated,**

Plaintiff,

VS.

**CONN APPLIANCES, INC D/B/A
CONN'S**

Defendant.

CASE NO. 5:15-cv-00886

CLASS ACTION

**PLAINTIFF’S NOTICE OF
VOLUNTARY DISMISSAL
WITHOUT PREJUDICE**

**PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL OF COMPLAINT WITHOUT
PREJUDICE**

TO THE HONORABLE JUDGE OF SAID COURT:

The Plaintiff, JASON GERLACH, herein files its Notice of Voluntary Dismissal without Prejudice:

MATERIAL FACTS

1. The Plaintiff filed suit against the Defendant, Conn Appliances, Inc. d/b/a CONN'S

(“Conn’s”) seeking to represent a putative class. Thereafter, Plaintiff attempted to serve

Conn's at its corporate office, wherein Conn's rejected and refused to accept service. Plaintiff filed its amended summons in order to serve Conn's at an alternate location. Shortly after requesting the amended summons, Counsel for Gerlach also filed a suit in the Bexar County Court with ties to this Case. After speaking with Counsel for Conn's, Counsel for Gerlach believes that a resolution of this matter may be reached. Moreover, Counsel for Gerlach has spoken with potential co-counsel regarding sister cases and potential Class Cases to be/already filed that could likely lead to this case being consumed in Multi-District Litigation. Plaintiff's counsel is cognizant of the delay in service in this case and based upon the above considerations and work performed, the Plaintiff respectfully asks this court to excuse the delay and to Voluntarily Dismiss this case without prejudice pursuant to F.R.C.P. 41 et seq.

NOTICE OF VOLUNTARY DISMISSAL

2. Plaintiff filed its suit and attempted to serve Conn's but as of the date of this motion, it has not. As of this date, no answer has been filed by the Defendants and no Motion for Summary Judgment is on file. Moreover, no Motion to Dismiss has been filed and the Defendant has not made an appearance in this case. Therefore, the Plaintiff has an unequivocal right to Voluntarily Dismiss this Case without prejudice. Moreover, the Plaintiff asks the Court to grant the Voluntary dismissal as the Plaintiff believes that it may be able to settle Gerlach's claims without the necessity of re-filing. If Plaintiff were to attempt to re-file, the Court more than likely would not be the proper venue given the multiplicity of suits to be filed or have been filed against said Defendant.
3. Pursuant to FRCP 41(a)(1)(A)(i), the Plaintiff need only file this notice; no other action is required and approval of this court or opposing counsel is not necessary for this case to be dismissed without prejudice. See also, *Williams v. Clarke*, 82 F.3d 270, 272 (8th

Cir.1996). Therefore, Plaintiffs avers that this court must dismiss this case without prejudice to refilling of the same.

PRAYER

WHEREFORE, Defendant prays the Court, accept the notice of voluntary dismissal and dismiss this case without prejudice to refilling of the same.

Respectfully submitted,

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By: /s/ Brian J. Trenz
Brian J. Trenz
Texas Bar No. 24067911
Attorney for Plaintiff

STATEMENT REGARDING CERTIFICATE OF SERVICE

Defendant has not been served and has not filed an answer in this case.

/s/ Brian J. Trenz
Brian J. Trenz